

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 463
HOUSE BILL 233

AN ACT TO AMEND THE GENERAL STATUTES OF NORTH CAROLINA BY ENACTING A NEW CHAPTER DESIGNATED CHAPTER 75C AND ENTITLED "MOTION PICTURE FAIR COMPETITION ACT".

The General Assembly of North Carolina enacts:

Section 1. A new Chapter of the North Carolina General Statutes is hereby enacted to read as follows:

"Chapter 75C.

"Motion Picture Fair Competition Act.

"§ 75C-1. Declaration of policy. — It is the policy of this State to establish fair and open procedures for the bidding and negotiation of motion pictures within the State in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the State; promote fair and effective competition in that business; and benefit the movie-going public by holding down admission prices to motion picture theatres, expanding the choice of motion pictures available to the public, and preventing exposure of the public to objectionable or unsuitable motion pictures by insuring that exhibitors have the opportunity to view a picture before committing themselves to exhibiting it.

"§ 75C-2. Definitions. — When used in this act, and for the purposes of this act:

- (a) The term 'person' includes one or more individuals, partnership, associations, societies, trusts, or corporations.
- (b) The term 'theatre' means any establishment in which motion pictures are exhibited to the public regularly for a charge.
- (c) The term 'distributor' means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental or licensing.
- (d) The term 'exhibitor' means any person engaged in the business of operating one or more theatres.
- (e) The term 'exhibit' or 'exhibition' means showing a motion picture to the public for a charge.
- (f) The term 'invitation to bid' means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the right to exhibit a first run motion picture.
- (g) The term 'bid' means a written or oral offer or proposal by an exhibitor to a distributor, in response to an invitation to bid for the right to exhibit a motion picture, stating the terms under which the exhibitor will agree to exhibit a motion picture.
- (h) The term 'license agreement' means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor.
- (i) The term 'trade screening' means the showing of a motion picture by a distributor within the State which is open to any exhibitor interested in exhibiting the motion picture.

- (j) The term 'blind bidding' means the bidding for, negotiating for, or offering or agreeing to terms for the licensing or exhibition of, a motion picture if such first run motion picture has not been trade screened within the State before any such event has occurred.
- (k) The term 'run' means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A 'first run' is the first exhibition of a picture in the designated area, a 'second run' is the second exhibition and 'subsequent runs' are subsequent exhibitions after the second run.

"§ 75C-3. Blind bidding prohibited. — (a) Blind bidding for a first run motion picture is hereby prohibited within the State. No bids shall be returnable, no negotiations for the exhibition or licensing of a first run motion picture shall take place, and no license agreement or any of its terms shall be agreed to for the first run exhibition of any motion picture within the State before the motion picture has been trade screened within the State.

(b) A distributor shall include in each invitation to bid for the first run exhibition of any motion picture within the State the date, time and place of the trade screening of the motion picture within the State.

(c) A distributor shall provide reasonable and uniform notice to exhibitors within the State of all trade screenings within the State of motion pictures he is distributing. Such notice may be provided by mail or by publication in a trade magazine or other publication having general circulation among exhibitors within the State.

(d) No exhibitor may bid, negotiate, or offer terms for the licensing or exhibition of a motion picture that has been trade screened in accordance with the provisions of Section 75C-3 herein, unless said exhibitor or his agent has attended the trade screening.

The provisions of this subdivision (d) are subject to waiver by the distributor of a motion picture upon notice of such waiver to an exhibitor prior to the trade screening.

(e) Any purported waiver of the requirements of subdivisions (a) through (c) of this section shall be void and unenforceable.

"§ 75C-4. Bidding procedures. — When bids are solicited from exhibitors for the licensing of a first run motion picture within the State, then:

- (a) The invitation to bid shall specify (1) the number and length of runs for which the bid is being solicited, whether it is a first, second or subsequent run, and the geographic area for each run; (2) the names of all exhibitors who are being individually solicited; (3) the date and hour the invitation to bid expires; and (4) the time and location, including the address, where the bids will be open, which shall be in the State. The invitation to bid may contain additional terms or conditions not inconsistent with the provisions of this Chapter.
- (b) All bids shall be submitted in writing and shall be opened at the same time and in the presence of exhibitors, or their agents, who submitted bids and who are present at such time. Bids may be opened at the scheduled time notwithstanding the absence of exhibitors entitled to appear at such time.
- (c) After being opened, bids shall be subject to examination by exhibitors, or their agents, who submitted bids. Within seven business days after a bid is accepted, the distributor shall notify in writing each exhibitor who submitted a bid of the terms of the accepted bid and the name of the winning bidder.
- (d) Once bids are solicited and no bids are received or all bids are withdrawn, the distributor shall license the picture by re-bids or negotiation; provided that nothing in this act shall be interpreted to require any distributor to accept any bid.

"§ 75C-5. Enforcement. — Any person who suffers loss or pecuniary damages resulting from a violation of the provisions of this Chapter shall be entitled to bring an individual action to recover damages and reasonable attorney fees. The provisions of this Chapter may be enforced by injunction or any other available equitable or legal remedy. Class actions are not available under this Chapter."

Sec. 2. If any section, paragraph or clause of this act shall be declared unconstitutional by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder hereof, but such declaration shall be limited to the section, paragraph or clause of this act that was declared unconstitutional.

Sec. 3 This act shall become effective July 1, 1979.

In the General Assembly read three times and ratified, this the 26th day of April, 1979.